IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 467 of 1984
With
Cross-Objection No.1520 of 1985
With
Civil Application No.1996 of 1984

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
FAKIRBHAI DAHYABHAI & 4 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MS MAYA S DESAI for Defendant(s) : 1,
None for Defendant(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/08/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 11th August 1983 passed by the Motor Accidents Claims Tribunal (Main), Surat, in Motor Accident Claim Petition No.206 of 1982 whereby the Tribunal has awarded a sum of Rs.64000/- along with interest at the rate of 6% per annum from the date of claim till realisation.

2. The case of the claimant was that while Shankerlal was proceeding on a cycle, the offending

truck dashed him from behind as a result of which he sustained serious injuries and ultimately succumbed to the injuries. The legal heirs of the deceased had therefore filed the aforesaid claim petition claiming a sum of Rs.1,00,000/- by way of compensation which was partly allowed as stated hereinabove.

3. Learned counsel for the appellant has contended that in view of the specific provision contained in Section 95(2)(b)(ii) of the Motor Vehicles Act, the Insurance Company's liability in respect of passenger carried for hire or reward is limited to Rs.50000/-. The relevant part of the said section as existing at the time of the accident reads as under:

> “95.(2) subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:-
>
> (a) xxx xxx xxx
>
> (b) where the vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, -
>
> (i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all,
>
> (ii) in respect of passengers, a limit of ten thousand rupees for each individual passenger.”

4. A perusal of the said section shows that the

liability in respect of passengers, is limited to an extent of Rupees Ten Thousand for each individual passenger. The accident in question is of the year 1981 and therefore the liability would not be more than Rs.50000/- qua the Insurance Company. This view is supported by a decision of this Court in the case of United India Fire and General Insurance Co. Ltd. Vs. Bachu Kaba Satrotia and ors., reported in 1986(1) GLR 463 wherein it is held that under section 95(2) of Motor Vehicles Act (IV of 1959) the liability of insurer in respect of a passenger carried for hire or reward by statute is limited
per individual passenger.

5. Learned counsel for the respondent-original claimant is not able to contest the aforesaid legal position. Therefore the award of the Tribunal which extents to Rs.64000/- is patently erroneous.

6. In the premises aforesaid, the present appeal is partly allowed. It is held that the liability of the present respondent nos.4 and 5 i.e. original opponent nos.1 and 2 shall remain intact to meet the entire claim awarded with interest as awarded by the Tribunal. However, so far as the present appellant Insurance Company is concerned, the award will stand modified and instead of of Rs.64000/- the award amount awarded against the appellant will be Rs.50000/- with running interest thereon at the rate of 6% per annum from the date of the application till realization. It will be open to the original

claimant to recover the remaining amount from respondent nos.6 and 7 i.e. original opponent nos.1 and 2. The remaining amount lying in the FDR along with interest shall be refunded to the Insurance Company. The award of the Claims Tribunal shall stand modified accordingly. No order as to costs.

7. In view of the order passed in First Appeal No.467 of 1984 I do not find any merits in the Cross-Objections and the same is accordingly disposed of.

8. Since the main appeal has been disposed of the above civil application would not survive and is accordingly disposed of.

[K.S. JHAVERI, J.]

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